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September 20, 2011

**VIA FACSIMILE AND FIRST CLASS MAIL**

Honorable Claire C. Cecchi, U.S.D.J.  
Martin Luther King Federal Building & U.S. Courthouse  
50 Walnut Street, P.O. Box 999  
Newark, New Jersey 07101

**Re: PepsiCo, Inc. et al. v. R.R. Importaciones, Inc., et al.**  
**Docket No. 2:11-CV-02315**

Dear Judge Cecchi:

This firm represents the Plaintiffs, PepsiCo, Inc. and The Concentrate Manufacturing Company Of Ireland, in this action. As I advised your Judicial Assistant, Jacquie Lambiase, earlier today, the parties have resolved the present dispute between them and reduced their agreement to a proposed Final Order, enclosed herewith. If it meets with Your Honor's approval, kindly sign and enter it on the docket in this matter. If you have any questions, please contact me by telephone or e-mail.

Thank you very much for your attention and courtesies.

Respectfully submitted,

**GENOVA, BURNS & GIANTOMASI**

  
JOHN W. BARTLETT

JWB/cr  
Enclosure

c: Ray Gonzalez, Esq. (via facsimile and first class mail)  
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UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

PEPSICO, INC., a North Carolina  
corporation, and THE CONCENTRATE  
MANUFACTURING COMPANY OF  
IRELAND, a corporation governed by the  
laws of the Republic of Ireland,

Plaintiffs,

vs.

R. R. IMPORTACIONES, INC., a New  
Jersey corporation and DOES 1-10,


Defendants.

)  
)  
) CASE NO. 2:11-CV-02315  
)  
) JUDGE CLAIRE C. CECCHI  
)  
) [PROPOSED] FINAL ORDER  
)  
)  
)  
)

Plaintiffs, PepsiCo, Inc., and the Concentrate Manufacturing Company of Ireland,  
("Plaintiffs) and Defendant, R.R. Importaciones, Inc., hereby stipulate to entry of final judgment  
as follows:

1. This Court has jurisdiction by virtue of the fact that:
  - (a) this is an action arising under the Trademark Act of 1946, as amended, 15 U.S.C. §§ 1051-1121 (the Lanham Act), jurisdiction being conferred in accordance with 15 U.S.C. § 1121 and 28 U.S.C. § 1338(a) and (b); and
  - (b) jurisdiction for the New Jersey state statutory and common law claims is conferred in accordance with the principles of supplemental jurisdiction pursuant to 28 U.S.C. § 1367(a).
2. This Court has personal jurisdiction over Defendant, R.R. Importaciones, Inc. ("Defendant").
3. Venue is proper in this Court, under 28 U.S.C. § 1391(a), because Defendant resides in this district and that, under 28 U.S.C. § 1391(b), a substantial part of the events or omissions giving rise to the claims occurred in this district.

4. Plaintiff, PepsiCo, Inc., is the owner, *inter alia*, of the following federal trademark registrations issued by the United States Patent and Trademark Office for marks used in connection with its PEPSI soft drinks ("PEPSI marks"):

MARK	REG. NO.	REG. DATE	GOODS
PEPSI	824,150	Feb. 14, 1967	Soft drinks and syrups and concentrates for the preparation thereof
PEPSI-COLA	824,151	Feb. 14, 1967	Soft drinks and syrups and concentrates for the preparation thereof
	824,153	Feb. 14, 1967	Soft Drinks
PEPSI and Design	2,100,417	Sept. 23, 1997	Soft Drinks
PEPSI and Design	2,104,304	Oct. 7, 1997	Soft Drinks

These registrations are valid, subsisting, incontestable, and constitute conclusive evidence of Plaintiff PepsiCo, Inc.'s exclusive right to use the PEPSI marks for the goods specified in the registrations, pursuant to 15 U.S.C. §§ 1065 and 1115(b).

5. Plaintiff, The Concentrate Manufacturing Company of Ireland ("CMCI"), is the owner, *inter alia*, of the following federal trademark registrations issued by the United States Patent and Trademark Office for marks used in connection with its MANZANITA SOL soft drinks ("MANZANITA SOL marks"):

MARK	REG. NO.	REG. DATE	GOODS
MANZANITA SOL	3,156,112	October 17, 2006	Soft drinks, and syrups and concentrates for making the same.
MANZANITA SOL and Design	3,167,654	November 7, 2006	Soft drinks, and syrups and concentrates for making the same.

These registrations are valid, subsisting and constitute conclusive evidence of Plaintiff CMCT's exclusive right to use the MANZANITA SOL marks for the goods specified in the registrations, pursuant to 15 U.S.C. §§ 1065 and 1115(b).

6. Without Plaintiffs' consent, Defendant has sold, in the United States, soft drinks manufactured in Mexico and meant only for sale in Mexico bearing the PEPSI marks and MANZANITA SOL marks ("Foreign Product").

7. Defendant's sale of the Foreign Product in the United States constitutes:
- (a) trademark infringement in violation of section 32 of the Lanham Act, 15 U.S.C. § 1114;
  - (b) unfair competition in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a);
  - (c) unfair competition in violation of New Jersey Stat. § 56:4-1;
  - (d) unfair competition in violation of New Jersey state common law;
  - (e) trademark infringement in violation of New Jersey common law;
  - (f) trademark dilution in violation of Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c); and
  - (g) trademark dilution in violation of New Jersey Stat. § 56:3-13.20.

8. Defendant, R.R. Importaciones, Inc., and its subsidiaries, affiliates, related entities, agents, servants, employees, successors, and assigns, and all others in active concert or participation with them, shall not import into, deal, market, sell, or distribute in the United States

soft drinks manufactured or bottled in Mexico, or any other foreign country, bearing any of the PEPSI marks, the MANZANITA SOL marks or any other marks owned by PepsiCo, Inc.

9. The suit against Defendants Does 1-10 is dismissed without prejudice.

10. This Court shall retain jurisdiction over this action for purposes of construing and enforcing this Final Judgment.

11. Each party shall bear its own costs.

CONSENTED AND AGREED TO:

PEPSICO INC. and CONCENTRATE  
MANUFACTURING COMPANY OF  
IRELAND

By: 

Dated: 9-20-11

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Attorneys for Plaintiffs

SO ORDERED AND ADJUDGED:

Date: 9/20/11

R.R. IMPORTACIONES, INC.

By: 

Dated: 9-16-11

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Attorney for Defendant R.R. Importaciones,  
Inc.



Hon. Claire C. Cecchi  
United States District Court Judge